

**REMARKS/ARGUMENTS****I. PROSECUTION HISTORY.**

A non-final Office Action was mailed on June 19, 2006 (hereinafter the “Office Action”). In response thereto, we submitted a Notice of Appeal on September 19, 2006, an Appeal Brief on February 20, 2007, and an amended Appeal Brief on May 18, 2007 (hereinafter, the “Appeal Brief”). An Examiner’s Answer was mailed on September 7, 2007 (hereinafter the “Examiner’s Answer”).

**II. WITHDRAWAL OF APPLICATION FROM APPEAL.**

While we do not agree with the rejection of the claims as set forth in the Office Action nor with the Examiner’s arguments as set forth in the Examiner’s Answer, we are now submitting a Request for Continued Examination concurrent with this Amendment, thereby withdrawing this application from appeal and reopening prosecution of the application. In particular, we are withdrawing this application from appeal to amend, cancel, and add new claims to recite particular embodiments that we, in our current business judgment, have determined to be commercially desirable.

The withdrawal of this application from appeal and the reopening of prosecution of this application are both proper and timely in that the appeal is still pending and there has been no decision by the Board. Specifically, the Examiner’s Answer did not raise any new grounds of rejection. In particular, Sections Six (Grounds of Rejection to be Reviewed on Appeal) and Nine (Grounds of Rejection) of the Examiner’s Answer did not specify any new grounds of rejection. See MPEP § 1207.03(I) (requirements for a new grounds of rejection in an examiner’s answer). Rather, in Section Nine the Examiner stated that “[t]hese are not new grounds of rejection.” Examiner’s Answer, page 3. As such, in accordance with MPEP § 1208(I), we were not required to file a reply brief to the Examiner’s Answer and this application should therefore have been forwarded to the Board for decision. In addition, there has been no decision by the Board regarding this application. As such, in accordance with MPEP § 1215.01, we may withdraw this application from appeal and reopen prosecution of the application. In particular, in accordance with MPEP § 1215.01, the submission of this Amendment together with the concurrently filed Request for Continued Examination and corresponding authorization to charge our deposit account the RCE fee set

forth under 37 C.F.R. 1.17(e) are sufficient to withdraw this application from appeal and reopen prosecution.

### **III. CLAIMS UNDER CONSIDERATION.**

According to the Office Action and the Examiner's Answer, claims **1, 3-4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, and 123-135** are pending and stand rejected.

We have amended independent claims **1, 13, 34, 53, 74, and 95** and dependent claims **3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73, 76-77, 92-94, 97-98, and 113-115**. We have canceled independent claim **116** and dependent claims **17, 20-21, 23-30, 35, 41-49, 54, 60-70, 75, 81-91, 96, 102-112, 117-119, and 123-135**. We have added new independent claim **209** and new dependent claims **136-208 and 210-223**. We will pursue the subject matter of the previously presented and canceled claims in one or more continuing applications. The amendments do not introduce any new matter.

Accordingly, the following claims are under consideration:

- Independent claims **1, 13, 34, 53, 74, 95, and 209**.
- Dependent claims **3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73, 76-77, 92-94, 97-98, 113-115, 136-208, and 210-223**.

### **IV. RESEPONSE TO THE REJECTION OF CLAIMS UNDER 35 U.S.C. § 103(a).**

In the Office Action and the Examiner's Answer, previously presented claims **1, 3-4, 6-17, 20-37, 41-56, 60-77, 81-98, 102-119, and 123-135** were rejected under 35 U.S.C. § 103(a) as being unpatentable over Gebb, U.S. Patent No. 6,067,532 (hereinafter Gebb).

#### **A. INDEPENDENT CLAIM 1: THE EXAMINER FAILED TO SHOW THAT GEBB DISCLOSES THE LIMITATIONS: “requesting ... authorization to transfer the item.”**

Currently presented claim **1** recites in part:

*requesting from a provider, which is not the first consumer, authorization to transfer the item.*

Regardless of how the Examiner has interpreted Gebb to read on the claim limitation of “*provider*,” contrary to the Examiner's assertions neither the determination and/or use of a service fee/transaction fee regarding a ticket resale price nor the verifying of an initial sale of a specific seat as disclosed by Gebb are “*requesting ... authorization*,” as recited by claim **1**.

Specifically, in rejecting similar limitations of previously presented claim 1, the Examiner asserted:

In the absence of an explicit definition, the term provider is given its broadest reasonable interpretation to include any type of intermediary such as brokers, scalpers, ticket outlets as well as Gebb's distribution system. Please see references to service fees (e.g., Col. 1, lines 4-10) and transaction fees (e.g., Col. 7, lines 60-65).

Examiner's Answer, page 13.

Similarly, in making further reference to Gebb column 7 the Examiner also asserted in part:

The ticket server also analyzes any agreements with the particular arena, promoter or entity (providers) regarding the establishment of resale prices (... a provider authorizing the transfer) [Col 7, Line 53].

Examiner's Answer, pages 5-6.

Regardless of which way the Examiner has interpreted the term "*provider*," the noted portions of Gebb do not support the Examiner's assertions that Gebb disclose "*requesting ... authorization to transfer the item*," as recited by claim 1.

Specifically, at column 1 Gebb discloses:

The present invention generally relates to the redistribution of event tickets, and more particularly, to an automated system for posting event tickets for sale, allowing purchase of the tickets at face value or at a market price based on demand and/or service fee and distributing new tickets to the new owner.

Gebb, column 1, lines 4-9.

Similarly, at column 7 Gebb discloses:

Ticket server **60** next suitably analyzes any agreements with the particular arena, promoter or entity regarding the establishment of the resale price. In another embodiment, ticket server **60** suitably compares the State in which the event is to be conducted with State law database **66** to determine if any laws within the particular State restrict the sales price of the consigned tickets (Step **160**). If the State has enacted laws restricting the resale of tickets at a price higher than the face value of the ticket or if an agreement with a particular arena prevents a higher price, the system will only add a transaction fee which conforms to any transaction fee limitation enacted by the particular State or within an arena agreement (step **162**).

Gebb, column 7, lines 53-65.

Contrary to the Examiner's assertions, "an automated system ... allowing purchase of

the tickets at face value or at a market price based on demand and/or service fee” as disclosed at Gebb column 1, is not “*requesting ... authorization to transfer the item.*” Similarly, a “[t]icket server ... [that] analyzes any agreements with the particular arena, promoter or entity” and/or that “compares the State in which the event is to be conducted with State law database” to establish a resale price that includes a “transaction fee” as disclosed at Gebb column 7, is not “*requesting ... authorization to transfer the item.*” The mere determination and/or use of a service fee/transaction fee as disclosed by Gebb is not “*requesting ... authorization,*” let alone “*requesting ... authorization to transfer the item.*”

In addition, “*requesting ... authorization to transfer the item*” is not an inherent feature of the above noted portions of Gebb. Specifically, MPEP § 2112 states in part:

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.... ‘In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.’

MPEP § 2112 (IV) (internal quotes omitted).

Contrary to MPEP § 2112, the Examiner failed to provide any basis in fact and/or technical reasoning to support a determination that “*requesting ... authorization to transfer the item*” necessarily flows from the portions of Gebb columns 1 and 7 referred to by the Examiner. Accordingly, assuming that the Examiner was making a rejection based on inherency, the rejection is improper.

In further rejecting previously presented claim 1, the Examiner also asserted:

Gebb discloses requesting authorization to transfer the item from the provider of the item.... For authorization from the provider, after the seller is verified, the ticket information itself is verified with the master arena (provider) database, which verifies the existence of the event and seat and the initial sale of the specific seat (contacting the provider to verify whether the seller possess the item) [Col 7, line 36], thereby addressing fraud.

Examiner’s Answer, page 4.

Contrary to the Examiner’s assertions, “verif[ying] the existence of the event and seat and the initial sale of the specific seat ..., thereby addressing fraud” is not “*requesting ... authorization,*” let alone “*requesting ... authorization to transfer the item.*” In addition, assuming the Examiner was asserting that “*requesting ... authorization to transfer the item*”

is an inherent feature of the portion of Gebb column 7 referred to by the Examiner, the Examiner again failed to provide any basis in fact and/or technical reasoning to support such a determination. Accordingly, any rejection based on inherency is improper.

Accordingly, for the foregoing reasons, the Examiner failed to show that the portions of Gebb referred to by the Examiner disclose “*requesting ... authorization to transfer the item,*” as recited by claim 1.

We respectfully request that if the Examiner wishes to maintain the rejection of claim 1 in view of Gebb that the Examiner clearly articulate how the mere determination and/or use of a service fee/transaction fee and/or the verifying of an initial sale of a specific seat support the Examiner’s assertions that Gebb discloses “*requesting ... authorization to transfer the item.*”

**B. INDEPENDENT CLAIM 1: THE EXAMINER FAILED TO PROVIDE FACTUAL FINDINGS SUPPORTED BY SUBSTANTIAL EVIDENCE THAT IT WOULD BE OBVIOUS TO MODIFY GEBB TO INCLUDE THE LIMITATIONS: “presenting to the first consumer a plurality of options ....”**

Currently presented claim 1 recites in part:

*causing to be presented to the first consumer a plurality of options, in which the options comprise to transfer the item by auctioning the item and to transfer the item by advertising the item, in which advertising the item comprises posting a price.*

**1. The Examiner has continuously failed to provide evidence to support a *prima facie* case of obviousness.**

The Examiner has continuously failed to provide any evidence, let alone substantial evidence, to support the Examiner’s findings that it would be obvious to modify Gebb to include limitations similar to those above and without such evidence, there is no *prima facie* case of obviousness.

Specifically, in rejecting similar limitations of previously presented claim 1, the Examiner conceded that Gebb does not disclose such limitations. Fourth Office Action, page 6; Examiner’s Answer, pages 6 and 14. Rather, the Examiner broadly asserted, without providing evidence or other clarification, that “to present customers with a user-friendly interface, including a web page with selectable options” is well known, asserted that Gebb discloses an “advertising interface” and a “bidding interface,” and asserted that

[o]ne of ordinary skill in the art at the time the invention was made would have been motivated to extend Gebb’s web pages to made to

present customers with a user-friendly interface, including a web page with selectable options for the obvious reason that by doing so, the system can restrict a user's options and possibly reduce input errors ... [and] [f]urther, the selection would allow the seller to choose a preferred method of sale, i.e., auction or set-price, in order to give the seller the most flexibility, thereby enhancing customer satisfaction.

Fourth Office Action, pages 4-6; Examiner's Answer, pages 6-7 and 13-15.

As previously stated, a motivation to modify a reference, unsupported by any evidence of record, lacks substantial evidence support and is thereby insufficient to establish a *prima facie* case of obviousness. Appeal Brief, pages 12-13. Nonetheless, the Examiner has continuously failed to provide any evidence of record to support:

- (a) that the Examiner's purported motivations (i.e., to "restrict a user's options and possibly reduce input errors" and "to give the seller the most flexibility, thereby enhancing customer satisfaction") to modify Gebb were recognized by the prior art; or
- (b) that even if these purported motivations were true, that these purported motivations would have prompted one of ordinary skill in the art to modify Gebb to include the limitations of claim 1.

Appeal Brief, pages 15-17.

Without any evidence of record, the Examiner's findings as to the scope of the prior art and the Examiner's purported motivations to modify Gebb lack substantial evidence support and are thereby insufficient to establish a *prima facie* case of obviousness.

While our statements were made prior to KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727 (S.Ct. 2007), our position is wholly consistent with that decision, thereby remaining unchanged. An obviousness analysis requires certain factual findings, and such factual findings must be supported by substantial evidence.

## **2. In view of KSR, factual findings supported by substantial evidence are still required to support a legal conclusion of obviousness.**

In response to the statements made in our Appeal Brief, the Examiner stated in part:

Appellants' pre-KSR brief argues that there is no teaching suggestion or motivation to combine Gebb with admitted prior art (previously Officially Cited). KSR forecloses Appellant's argument that a specific teaching is required for a finding of obviousness. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Examiner's Answer, page 7.

Contrary to the Examiner's apparent assertions, even in view of KSR the Examiner must still present factual findings supported by substantial evidence in order to support a conclusion of obviousness. Conclusory statements unsupported by any evidence, let alone substantial evidence, are insufficient to establish a *prima facie* case of obviousness.

Specifically, the Federal Circuit has held that obviousness is a legal question based on underlying factual findings that must be supported by substantial evidence. In re Zurko, 258 F.3d 1379, 1383-84 (Fed. Cir. 2001) ("Obviousness is a legal question based on underlying factual determinations.... We review factual findings underlying [the legal determination of obviousness] for substantial evidence."); see also MPEP § 2144.03 ("The standard of review applied to findings of fact is the 'substantial evidence' standard under the Administrative Procedure Act (APA)"). In KSR the Court did not overrule this precedence. Rather, the Court, quoting the Federal Circuit with approval, reiterated that mere conclusory statements are insufficient on which to base a conclusion of obviousness. KSR, 127 S.Ct. at 1740-42 ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (quoting In re Kahn, 441 F.3d 977, 088 (C.A.Fed. 2006))).

Similarly, the MPEP clearly articulates that obviousness is a question of law based on underlying factual findings. Specifically, MPEP § 2141 states in part:

**Obviousness is a question of law based on underlying factual inquiries. ...**

Office personnel fulfill the critical role of fact-finder when resolving the *Graham* inquiries. **It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying *Graham* inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied.** In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. **Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.**

MPEP § 2141(I) (emphasis added).

Similarly, MPEP § 2142 states in part:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.* ... noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that ‘rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’

MPEP § 2142 (emphasis added).

As discussed above and as further discussed below, in rejecting previously presented claim 1 regarding the limitations “*presenting the first consumer a plurality of options ...*,” the Examiner merely asserted conclusory statements unsupported by any evidence and as such, there is no *prima facie* case of obviousness.

### **3. Factual findings are required to establish a prima facie case of obviousness under any rational .**

In view of KSR, MPEP § 2143 was amended to include several unsupported and conclusory “rationales” to support a *prima facie* case of obviousness. The Examiner appeared to reject previously presented claim 1 based on two of these rationales, including the rational set forth in MPEP § 2143 (A) and the rational set forth in MPEP § 2143 (G). Regardless of which rational the Examiner used, the Examiner failed to provide factual findings, let alone factual findings supported by substantial evidence, on which to base a conclusion of obviousness and without such factual findings, there is no *prima facie* case of obviousness.

#### **a) MPEP § 2143 (G): Some Teaching, Suggestion, or Motivation in the Prior Art That Would Have Led One of Ordinary Skill To Modify the Prior Art Reference or To Combine Prior Art Reference Teachings To Arrive at the Claimed Invention.**

In one aspect, the Examiner rejected claim 1 based on the rational set forth in MPEP § 2143 (G). In particular, the Examiner asserted purported motivations (i.e., to “restrict a user’s options and possibly reduce input errors” and “to give the seller the most flexibility, thereby enhancing customer satisfaction”) to modify Gebb to include the limitations of claim 1. Examiner’s Answer, pages 6-8 and 13-15.

MPEP § 2143 (G) states in part:

To reject a claim based on this rationale, **Office personnel must resolve the *Graham* factual inquiries**. Then, Office personnel must articulate the following:

(1) **a finding** that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; ...

**If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.**

MPEP § 2143 (G) (emphasis added).

As similarly discussed above, the Examiner failed to provide any evidence to support the Examiner's purported motivations for modifying Gebb to include the limitations of claim

1. As clearly articulated by MPEP §§ 2141, 2142, and 2143, and by the Supreme Court and the Federal Circuit, without factual findings, the Examiner's statements are merely conclusory and are insufficient to establish a *prima facie* case of obviousness. If the Examiner wishes to maintain a rejection of currently presented claim 1 under the rational set forth in MPEP § 2143 (G), we respectfully request that the Examiner provide factual findings on which to base a conclusion of obviousness.

**b) MPEP § 2143 (A): Combining Prior Art Elements According to Known Methods To Yield Predictable Results.**

In another aspect, the Examiner also rejected claim 1 based on the rational set forth in MPEP § 2143 (A). In particular, the Examiner asserted in part:

The Examiner also notes that the claims recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus the claimed subject matter likely would have been obvious under KSR.

Examiner's Answer, pages 7-9.

MPEP § 2143 (A) states in part:

To reject a claim based on this rationale, **Office personnel must resolve the *Graham* factual inquiries**. Then, Office personnel must articulate the following: ...

(2) **a finding** that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately;

(3) a **finding** that one of ordinary skill in the art would have recognized that the results of the combination were predictable; ...

**If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.**

MPEP § 2143 (A) (emphasis added).

The Examiner's above noted statements are merely conclusory statements unsupported by any evidence. Again, as clearly articulated by MPEP §§ 2141, 2142, and 2143, and by the Supreme Court and the Federal Circuit, without factual findings there can be no *prima facie* case of obviousness. If the Examiner wishes to maintain a rejection of currently presented claim 1 under the rational set forth in MPEP § 2143 (A), we respectfully request that the Examiner provide factual findings on which to base a conclusion of obviousness.

**4. Modifying Gebb to include the limitations of claim 1 would render Gebb unsatisfactory for its intended purpose.**

The limitations of “*causing to be presented to the first consumer a plurality of options...*” as recited by currently presented claim 1 are nonobvious in view of Gebb because Gebb teaches away from such a modification. Specifically, MPEP § 2143 states in part,

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

MPEP § 2143.01 (V).

Similarly, in KSR the Court stated that “when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.” KSR, 127 S.Ct. at 1740-41.

Modifying Gebb to include the limitations of claim 1 would render Gebb unsatisfactory for its intended purpose and as such, Gebb teaches away from such a modification. Specifically, Gebb discloses in part:

Ticket server 60 next suitably analyzes any agreements with the particular arena, promoter or entity regarding the establishment of the resale price. In another embodiment, ticket server 60 also suitably compares the State in which the event is to be conducted with State law database 66 to determine if any laws within the particular State restrict the sales price of the consigned tickets (Step 160). If the State has enacted laws restricting the resale of tickets at a price higher than

the face value of the ticket or if an agreement with a particular arena prevents a higher price, the system will only add a transaction fee which conforms to any transaction fee limitation enacted by the particular State or within an arena agreement (step 162). If the state or arena does not restrict the resale of tickets at an increased price, the ticket information will also be placed in offer database 68, thereby allowing buyers to "bid" for the ticket such that the ticket will be sold to the highest bidder.

Gebb, column 7, line 53 to column 8, line 2.

Accordingly, Gebb discloses a system that automatically determines, based on an arena agreement and/or state laws, whether to sell a ticket via bidding or at a price that includes the face value plus a transaction fee. As such, modifying Gebb to "*caus[e] to be presented to the first consumer a plurality of options, in which the options comprise to transfer the item by auctioning the item and to transfer the item by posting an advertisement for the item ...*" as recited by claim 1 would mean to provide to the first consumer of Gebb a plurality of options that would be subject to an arena agreement and/or state laws. In other words, the plurality of options presented to the first consumer of Gebb would in fact be meaningless. As such, Gebb teaches away from the above limitations of claim 1 and claim 1 is thereby nonobvious in view of Gebb.

**C. “OFFICIALLY NOTED” SUBJECT MATTER CANNOT BE USED AS THE BASIS FOR A REJECTION UNDER 35 U.S.C. § 103.**

“Officially-noted” subject matter cannot be used as the basis for a rejection under Section 103. In particular, in a determination of obviousness, factual findings must be supported by substantial evidence. In re Zurko, 258 F.3d at 1383-84 and 1386 (“Obviousness is a legal question based on underlying factual determinations.... We review factual findings underlying [the legal determination of obviousness] for substantial evidence.” “With respect to core factual findings in a determination of patentability, the Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.”); Novamedix Distrib. Ltd. v. Dickinson, 175 F. Supp. 2d 8, 9 (D.D.C. 2001) (In a determination of obviousness, factual findings as to scope and content of the prior art, level of ordinary skill in the art, differences between the claimed invention and the prior art, and secondary considerations of nonobviousness must be supported by substantial evidence); MPEP § 2144.03(A) (“It is never appropriate to rely

solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.”).

In further rejecting previously presented claim 1 regarding the limitations “*presenting the first consumer a plurality of options ...*,” the Examiner took “official notice” regarding various subject matter, including:

- a) it is well within the level of one of ordinary skill in the art at the time the invention was made to present customers with a user-friendly interface, including a web page with selectable options
- b) it would have been obvious to one skilled in the art at the time to allow the seller to choose a preferred method of sale, i.e., auction or set-price, in order to give the seller the most flexibility, thereby enhancing customer satisfaction.

Fourth Office Action, pages 6-9; Examiner’s Answer, pages 6-10.

The Examiner also appeared to take “official notice” regarding the assertion:

[o]ne of ordinary skill in the art at the time the invention was made would have been motivated to extend Gebb’s web pages to make to present customers with a user-friendly interface, including a web page with selectable options for the obvious reason that by doing so, the system can restrict a user’s options and possibly reduce input errors.

Fourth Office Action, page 6; Examiner’s Answer, pages 6-10.

Because the Examiner did not provide any evidence to support this “officially noted” subject matter, these unsupported assertions clearly lack substantial evidence support. Again, factual findings unsupported by substantial evidence are insufficient to establish a *prima facie* case of obviousness. Thus, the Examiner again failed to make a *prima facie* case of obviousness with respect to claim 1.

#### **D. THERE IS NO ADMITTED PRIOR ART.**

The Examiner asserted that we failed to adequately traverse the Examiner’s taking of “official notice” and as such, the officially noted subject matter is now admitted prior art. See, e.g., Fourth Office Action, pages 7-9; Examiner’s Answer, pages 9-10. We respectfully disagree with the Examiner’s assertions.

First, as indicated above, “officially noted” subject matter cannot be used as the basis for a rejection under Section 103. As discussed above and as similarly stated in prior responses, a determination of obviousness requires factual findings that must be supported by

substantial evidence. Applicants' Second Response of August 13, 2004, pages 48-50; Applicants' Third Response of March 9, 2006, page 33; Appeal Brief, pages 12-13 and 15-17.

Second, we have repeatedly disputed the Examiner's failure to provide factual findings and as such, have repeatedly traversed the Examiner's taking of "official notice." Applicants' Second Response of August 13, 2004, pages 48-50; Applicants' Third Response of March 9, 2006, page 33; Appeal Brief, pages 15-17.

Third, regarding the Examiner's reliance on 37 C.F.R. 1.104(d)(2) as support for the assertion that we are required to state "why the noticed fact is not considered to be common knowledge or well known in the art" (Examiner's Answer, page 9), 37 C.F.R. 1.104(d)(2) places no such burden on applicants.

Fourth, regarding the Examiner's reliance on In re Boon as support for the assertion that an "adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art" (Examiner's Answer, page 10), In re Boon does not support this notion and the Examiner has in fact misinterpreted the holding of this case.

#### **E. INDEPENDENT CLAIMS 13, 34, 53, 74, 95, and 209.**

Currently presented independent claims **13, 34, 53, 74, 95, and 209** each recites limitations similar to the "*requesting ... authorization to transfer*" limitation of claim **1**. For reasons similarly discussed above, the portions of Gebb referred to by the Examiner in rejecting claim **1** do not disclose such limitations of claims **13, 34, 53, 74, 95, and 209**.

#### **F. DEPENDENT CLAIMS.**

Dependent claims **3-4, 6-12, 14-16, 22, 31-33, 36-37, 50-52, 55-56, 71-73, 76-77, 92-94, 97-98, 113-115, 136-208, and 210-223** depend from independent claims **1, 13, 34, 53, 74, 95, and 209** and as such, for at least the reasons discussed above recite limitations the Examiner failed to show are disclosed by Gebb.

#### **V. CONCLUSION.**

In view of the foregoing, we submit that claims **1, 3-4, 6-16, 22, 31-34, 36-37, 50-53, 55-56, 71-74, 76-77, 92-95, 97-98, 113-115, and 136-223** are allowable. Favorable reconsideration and allowance of these claims are therefore requested. We earnestly believe

that this application is now in condition to be passed to issue, and such action is also respectfully requested. However, if the Examiner deems it would in any way facilitate the prosecution of this application, the Examiner is invited to telephone our undersigned representative at 212-294-7733.

Respectfully submitted,

/Glen R. Farbanish/

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Date

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